

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 10

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
GARY A. SCARZAFAVA, ATTORNEY)
Defendant)

ANSWER

NOW COMES the Defendant, Gary A. Scarzafava, by and through counsel within the extension of time allowed by counsel for the Plaintiff, and ANSWERS the Complaint of the North Carolina State Bar:

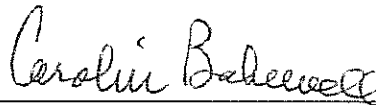
1. Admitted.
2. Admitted. It is further admitted that Mr. Scarzafava has been a licensed attorney in good standing in one or more jurisdictions since 1980 and at all times has been in good standing without any disciplinary violations in each jurisdiction.
3. Admitted.
4. It is admitted that Mr. Scarzafava began working for the Kestenbaum Law Firm (hereafter, KLF) in May 2008 and that his last day of work was February 12, 2010. Except as admitted herein, the allegations in Paragraph 4 of the State Bar's Complaint are denied.
5. It is admitted that KLF paid Mr. Scarzafava a bi-weekly salary prior to February 12, 2010. KLF did not pay Mr. Scarzafava on February 12, 2010 and he thereafter filed a claim against KLF with the North Carolina Department of Labor to collect his unpaid wages. Except as admitted herein, the allegations in Paragraph 5 of the State Bar's Complaint are denied.
6. Admitted, as clarified in Paragraph 7, below.

7. It is admitted that Mr. Scarzafava's agreement with KLF provided that if he included time spent on mediations on his time sheet submissions to KLF, then he would bill the client through KLF and the fee would be received by and belong to KLF. It is further admitted that Mr. Scarzafava's agreement with KLF provided that if he did not submit time spent on mediations on his KLF time sheets, he would bill for the mediation work himself and the resulting fee would be his sole property. Except as admitted herein, the allegations in Paragraph 7 of the State Bar's Complaint are denied.
8. Denied. Mr. Scarzafava was only required to bill time spent on mediations through KLF if he reported the time to the firm for the purpose of meeting his minimum billing obligations.
9. Admitted.
10. Admitted. The bill was presented to the City of Wilson care of Paul Blake.
11. Admitted. It is further admitted that Mr. Scarzafava did not submit the time he spent on the mediation to KLF, did not request compensation for the time from KLF and did not request that the time be counted toward his minimum billing requirements.
12. Admitted. Mr. Scarzafava was paid \$468.75 for his work as a mediator in the Payton case.
13. Admitted.
14. It is admitted that Mr. Scarzafava did not turn over the fee in the Payton case to KLF. However, he was not obligated to do so, pursuant to his agreement with Jane Kestenbaum (Ms. Kestenbaum), the owner of KLF. Except as admitted herein, the Allegations in Paragraph 14 of the State Bar Complaint are denied.
15. Denied. There was no general firm practice regarding calendaring mediations. It is admitted that Mr. Scarzafava generally placed his mediations on the firm Outlook electronic calendar for the purpose of alerting Ms. Kestenbaum to his whereabouts. Except as admitted herein, the Allegations in Paragraph 15 of the State Bar Complaint are denied.
16. Denied. Ms. Kestenbaum knew that Mr. Scarzafava attended the mediation as scheduled, knew that he was not going to bill for the matter through KLF and commented to him on the day after the mediation that he would have made more money had he spent the time working on matters for KLF.

17. Denied. Mr. Scarzafava resigned from KLF on February 12, 2010 after he was not paid and he received no answer from Ms. Kestenbaum or her husband regarding his inquiries about when payment would be forthcoming. He took timely and appropriate action to notify his clients of his departure from the firm and to ensure that their deadlines would be met.
18. The allegations following Paragraph 17 of the State Bar's Complaint are legal conclusions to which no Answer is required. To the extent that such allegations require an Answer, however, they are hereby DENIED.
19. As a further Answer and Response, Mr. Scarzafava responds to the State Bar Complaint by admitting that Ms. Kestenbaum initiated this matter in retaliation for the complaint that Mr. Scarzafava filed against her with the North Carolina Department of Labor.

Wherefore the Defendant, Gary A. Scarzafava, hereby requests that the State Bar's Complaint be dismissed and such other and further relief as the Disciplinary Hearing Commission deems proper.

This the 24th day of May, 2011.




Carolin Bakewell
Defendant's Attorney
The Bocker Law Firm
5540 Centerview Drive
Ste. 200
Raleigh NC 27606

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER in N.C. State Bar v. Scarzafava, 11 DHC 10, was served upon the North Carolina State Bar by depositing a copy therefore into the U.S. Mail in a postage prepaid wrapper addressed as follows to the Bar Counsel of record assigned to this matter:

Mr. Barry McNeill, Esq.
Deputy Counsel
The N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611

This the 24th day of May, 2011.



Carolin Bakewell